

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BLUEFIELD

CHRISTOPHER L. HARRIS,

Petitioner,

v.

Case No. 1:14-cv-12662

**BART MASTERS, Warden,
FCI McDowell,**

Respondent.

PROPOSED FINDINGS AND RECOMMENDATION

Pending before the court is the petitioner's Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241 (ECF No. 1). This matter is assigned to the Honorable David A. Faber, Senior United States District Judge, and it is referred to the undersigned United States Magistrate Judge for submission of proposed findings and a recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B).

On April 17, 2014, the undersigned entered an Order and Notice advising the petitioner that the claim raised in his petition is not a proper claim to be addressed in habeas corpus but, rather, is more appropriately brought, if at all, in a civil rights complaint pursuant to the holding in *Bivens v. Six Unknown Federal Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 91 S. Ct. 1999, 24 L. Ed.2d 619 (1971). Accordingly, the undersigned ordered the petitioner to complete and file a *Bivens* Complaint and related paperwork within thirty (30) days.

On May 6, 2014, the Clerk's Office received the completed *Bivens* Complaint, an Application to Proceed Without Prepayment of Fees and Costs, a Consent to Collection of Fees From Trust Account and a Request for an Alternative Dispute Resolution. *Harris v. Martin, et al.*, Case No. 1:14-cv-15925, which is also assigned to the presiding District Judge, was opened to address the petitioner's Complaint and related paperwork received on May 6, 2014.

The petitioner was given ten (10) days to notify the court in writing of whether he would voluntary dismiss the instant civil action (Case No. 1:14-cv-12662 – the habeas case), in light of the fact that his claim will now be addressed in the new *Bivens* action. The petitioner was advised that his failure to agree to the voluntary dismissal of this matter within that time frame would result in a recommendation to the presiding District Judge that the habeas matter be dismissed without prejudice.

As of today, the petitioner has not advised the court in writing, or otherwise, of his willingness to dismiss this habeas corpus action. Thus, as noted above, the undersigned proposes that the presiding District Judge **FIND** that the issues raised in the petitioner's section 2241 petition are not appropriately raised in a section 2241 habeas corpus proceeding, and that the same issues may be addressed in the petitioner's separate *Bivens* action, Case No. 1:14-cv-15925. Therefore, it is respectfully **RECOMMENDED** that the presiding District Judge **DISMISS** the instant matter, without prejudice.

The petitioner is notified that this Proposed Findings and Recommendation is hereby **FILED**, and a copy will be submitted to the Honorable David A. Faber, Senior United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), Rules 6(d) and 72(b), Federal Rules of Civil Procedure, and Rules

1(b) and 8(b) of the Rules Governing Proceedings in the United States District Courts Under Section 2254 of Title 28, United States Code, the parties shall have fourteen days (filing of objections) and then three days (service mailing) from the date of filing this Proposed Findings and Recommendation within which to file with the Clerk of this Court, specific written objections, identifying the portions of the Proposed Findings and Recommendation to which objection is made, and the basis of such objection. Extension of this time period may be granted by the presiding District Judge for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. *Snyder v. Ridenour*, 889 F.2d 1363 (4th Cir. 1989); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984). Copies of such objections shall be served on Judge Faber.

The Clerk is directed to file this Proposed Findings and Recommendation and to mail a copy of the same to the petitioner.

May 20, 2014



Dwane L. Tinsley
United States Magistrate Judge